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Error to Circuit Court, Alexandria County.

Action by Miss Anna E. Deahl against the Washington-Virginia Railway Company. Judgment for plaintiff, and defendant brings error. Reversed.

Moore, Keith, McCandlish & Hall and *Jno. S. Barbour*, all of Fairfax, for plaintiff in error.

Henry I. Quinn, of Washington, D. C., and *Leo P. Harlow* and *J. K. M. Norton*, both of Alexandria, for defendant in error.

HENRY'S EX'X v. PAYNE.

Sept. 17, 1919.

[100 S. E. 845.]

1. Chattel Mortgages (§ 139*)—Lien; Notice of Mortgagee of Claim of Third Person.—Mortgagee in a chattel mortgage given to secure prior indebtedness, even though considered a deed of trust, acquired no lien where he had prior notice that grantor had previously executed a bill of sale to another.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 800; 10 Va.-W. Va. Enc. Dig. 43.]

2. Fraudulent Conveyances (§ 219*)—General Creditors; Sales without Delivery.—Code 1904, § 2465, providing that every bill of sale of goods and chattels, when the possession is allowed to remain with the grantor, shall be void as to subsequent purchasers for valuable consideration without notice until duly admitted to record, a creditor without a lien stands on no higher footing than his debtor, and cannot successfully invoke the benefit of the statute.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 683.]

3. Fraudulent Conveyances (§ 154 (1)*)—Retention of Possession; Failure to Record Bill of Sale.—One to whom a bill of sale of property was executed was not estopped to claim the property by reason of having failed to record the same as provided by Code 1904, § 2465, although he left the property in the hands of the prior owner and a third person extended credit to such former owner by reason of his possession and claim of ownership, there being no claim of purchaser's fraud or knowledge that third person was extending credit on faith of prior owner's continuing ownership.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 586.]

4. Fraudulent Conveyances (§ 154 (1)*)—Retention of Possession; Failure to Record Bill of Sale.—In view of Code 1904, § 2465, a landlord may acquire a lien by distress warrant, or by execution levied

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

on property in the hands of his tenant, even after learning that the tenant has given a bill of sale therefor, and can defeat the rights of the true owner of the property, if such lien is acquired before the bill of sale is recorded.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 683.]

Appeal from Corporation Court of Roanoke.

Suit between one Payne and the executrix of R. R. Henry. From an adverse decree, the latter appeals. Reversed.

Randolph Henry & Thos. M. Darnall, both of Roanoke, for appellant

J. H. Stuart and C. R. Williams, both of Roanoke, for appellee.

PERKINS *v.* MINERS' BANK OF COMMERCE.

Sept. 17, 1919.

[101 S. E. 50.]

1. Judgment (§ 161*)—Setting Aside Office Judgment; Answer of Partner.—A plea by a defendant that he was not a member of the partnership sued was sufficient to set aside an office judgment; the only additional effect of an affidavit, under Code 1904, § 3280, being to put upon the plaintiff the burden of proving the partnership, a fact which may be, and often is, quite collateral to the issue.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 227.]

2. Judgment (§ 161*)—Setting Aside Office Judgment; Plea by One Partner.—Where a partnership was sued and an office judgment entered, a plea by one of the alleged partners to the effect that he was not a member of the partnership, and an affidavit so stating, did not "put the matter in issue" as to other alleged partners, and could not inure to their benefit or entitle them to have the office judgment set aside.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 235.]

Error to Circuit Court, Wise County.

Action by the Miners' Bank of Commerce against the Coeburn Lumber & Planing Mill Company and others. There was an order overruling a motion to set aside a default judgment, and defendant Rhoda Perkins brings error. Affirmed.

A. N. Kilgore, of Wise, for plaintiff in error.

Bond & Bruce, of Wise, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.